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## **1207.04 < Reopening of Prosecution After Appeal [R-3] - 1200 Appeal**

### **1207.04 < Reopening of Prosecution After Appeal [R-3]**

The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under **37 CFR 1.97(c)** where no statement under **37 CFR 1.97(e)** was filed. See **MPEP § 706.07(a)**. >Any after final amendment or affidavit or other evidence that was not entered before must be entered and considered on the merits.<

Form paragraph \*>12.187< may be used when reopening prosecution:

\*\*&gt;

#### **¶ 12.187 Reopening of Prosecution After Appeal Brief or Reply Brief**

In view of the **[1]** filed on **[2]**, PROSECUTION IS HEREBY REOPENED. **[3]** set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under **37 CFR 1.111** (if this Office action is non-final) or a reply under **37 CFR 1.113** (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under **37 CFR 41.31** **followed by an appeal brief under 37 CFR 41.37**. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in **37 CFR 41.20** have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

[4]

**Examiner Note**

1. In bracket 1, insert --appeal brief--, --supplemental appeal brief--, --reply brief-- or --supplemental reply brief--.
2. In bracket 2, insert the date on which the brief was filed.
3. In bracket 3, insert --A new ground of rejection is-- or --New grounds of rejection are--.
4. In bracket 4, insert the SPE's signature. Approval of the SPE is required to reopen prosecution after an appeal. See MPEP §§ **1002.02(d)** and 1208.02.
5. Use this form paragraph to reopen prosecution in order to make a new ground of rejection of claims. The Office action following a reopening of prosecution may be made final if all new grounds of rejection were either (A) necessitated by amendment or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § **706.07(a)**.

&lt;

After reopening of prosecution, appellant must exercise one of the following options to avoid abandonment of the application:

- (A) file a reply under **37 CFR 1.111**, if the Office action is non-final;
- (B) file a reply under **37 CFR 1.113**, if the Office action is final; or
- (C) **\*\*>**initiate a new appeal by filing a new notice of appeal under 37 CFR **41.31****<**.

**\*\*>**If< appellant elects to continue prosecution **\*\*>**and< prosecution was reopened prior to a decision on the merits by the Board of Patent Appeals and Interferences, the fee paid for the notice of appeal, appeal brief, and request for oral hearing (if applicable) will be applied to a later appeal on the same application. If>, however, the appeal fees set forth in 37 CFR **41.20** have increased since they were previously paid, applicant must pay the difference between the increased fees and the amount previously paid. If appellant elects to initiate a new appeal by filing a notice of appeal, appellant must file a complete new brief in compliance with the 37 CFR **41.37** **within two months from the filing of the new notice of appeal**. See MPEP § **1204.01** for more information on reinstatement of an appeal.<

**\*\*>****browse after**

**KEY:** =online business system =fees =forms =help =laws/regulations =definition

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(glossary)

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